

ROCANELLI, J.

Joann Oscar, Defendant below/Appellant, brings this civil appeal from a written decision dated March 30, 2010 of the Division of Motor Vehicles, Plaintiff below/Appellee ("DMV"). This Court holds that the hearing officer's finding that the Trooper had probable cause to conclude that Oscar had operated a motor vehicle while under the influence of alcohol is supported by substantial evidence in the record. Accordingly, the decision of the hearing officer is affirmed.

FACTS

On October 24, 2009, at approximately 12:44 a.m., Corporal Megan Boswick¹ of the Delaware State Police was "dispatched to an unknown accident," described as a vehicle in a ditch along Route 72, approximately a quarter mile from Route 13 in the area of Delaware City. (Oscar, TR. 3:13-17, March 23, 2010) ("TR"). The vehicle, a 1999 Dodge Caravan, had "heavy front-end damage, and the airbags had deployed." (TR 4:8; TR 3:21-22). The vehicle was still running; it was in parked gear; and the driver's side door was open. (TR 3:22-24). There was no one in the vehicle, and neither Corporal Boswick nor her fellow officers found anyone outside the vehicle after searching the area. (TR 4:1-6).

Corporal Boswick identified and contacted the registered owner of the vehicle, Raymond Hales. (TR 4:9). Mr. Hales had loaned his vehicle to his girlfriend to drive to work. (TR 4:16-17). Mr. Hales had tried to call his girlfriend on her cellular phone but was unsuccessful. (TR 4:19). Mr. Hales called Corporal Boswick back to advise that he had learned that his girlfriend, Joann Oscar, was in St. George's at his friend Brian

¹ The record refers to the Trooper by two different names, Corporal Megan Boswick and Corporal Megan Hazzard. For purposes of this decision, refers to the Trooper as Corporal Boswick.

Gravelle's house, and that she had told his friend that she walked to the Gravelle house "after her car broke down." (TR 4:24-5:4). Corporal Boswick spoke with Mr. Gravelle and learned that he lived at 205 North Main Street in St. George's, which was "1.9 miles away from the accident scene."

Corporal Boswick drove to the Gravelle home where she found Oscar sitting on a couch. (TR 5:11-23). Oscar confirmed her identity to the Trooper. Corporal Boswick "immediately smelled a strong odor of an alcoholic beverage" on Oscar's breath and observed that she had "bloodshot, glassy eyes." (TR 5:13-18). Oscar admitted that she had been in the accident and that she was driving at the time of the accident. (TR 5:19-20). Oscar estimated the time of accident to be 11:00 p.m.. Corporal Boswick testified that Oscar was "polite and cooperative." (TR 10:12-13).

Oscar told the Trooper that she had left work at approximately 10:30 p.m.. (TR 6:10). Oscar "could not recall why she ran off the road but thinks she may have been texting." (TR 6:15-17). She could not find her cell phone and that is why she walked to the Gravelles' home. (TR 6:17-19). She denied injury. (TR 5:24-6:1).

Oscar told Officer Boswick that she had not taken any medications. (TR 6:2). Oscar stated she consumed a glass of wine after the accident. (TR 6:5). Corporal Boswick only saw a partially consumed bottle of Nestea Red Tea. Oscar stated that she had nothing to drink until she got to the house. (TR 6:20-21). Oscar claimed that she "drank an unknown quantity of an unknown wine from an unknown container that she advised the homeowners, the Gravelles, had provided to her." (TR 6:20-24). Oscar could not produce the container from which she drank the wine. (TR 7:1-2). Oscar refused the breath test, as well as all field tests. (TR 7:5-7).

Concluding there was probable cause to arrest Oscar for DUI, at 1:58 a.m., Corporal Boswick took Oscar into custody. A search of Oscar's person produced several medications. (TR 7:8-10). Oscar stated that she had taken "Lexipro and Lorazepam." (TR 7:11). After taking Oscar into custody, Corporal Boswick questioned the residents, Mr. and Mrs. Gravelle. (TR 7:18-20). The Gravelles advised that Oscar knocked on their door at approximately 1:15 a.m.. (TR 7:22). They stated that the only drink they gave to Oscar was the Nestea Red Tea that Officer Boswick had observed. (TR 8:6). The Gravelles stated that they did not have any alcoholic beverages in the residence. (TR 8:7-9).

Corporal Boswick estimated that she arrived with Oscar at Troop 9 at approximately 2:20 a.m.. Oscar again refused to submit to any standard field tests at 2:30 a.m.. Corporal Boswick read the Implied Consent Form to Oscar. Corporal Boswick asked Oscar again to submit to the breath test or a chemical test, and again Oscar refused. (TR 17-19). When Corporal Boswick inquired as to why she would not submit to the testing, Oscar responded that "she didn't want to have a second DUI." (TR 8:20-21). Oscar added "I have two jobs and five kids that I need to drive to [provide] for." (TR 8:21-22). The Implied Consent Form confirms that statement by Oscar.² Corporal Boswick completed the form, (TR 9:14), and Oscar signed it. (TR 8:23; TR 9:16). Oscar was issued a citation for the DUI/alcohol, and two other traffic offenses.

² On the Probable Cause and Implied Consent Form, signed by Oscar, Corporal Boswick recorded Oscar's response to the question "1) [w]hat is your reason for refusing [to the breath test]?" Oscar responded "I don't want to have a 2nd DUI; I have two jobs and five kids that I need to drive to provide for."

DMV RULING

Following the March 23rd hearing, the DMV hearing officer issued a written decision dated March 30, 2010 wherein he concluded that the Trooper had probable cause to arrest Oscar for driving under the influence of alcohol in violation of 21 *Del. C.* § 4177(a). That conclusion, in addition to Oscar's refusal to take any test authorized by the implied consent statute, resulted in the DMV's revocation of her license. Oscar timely filed this appeal.

STANDARD AND SCOPE OF REVIEW

The standard and scope of review of an appeal from an administrative decision of the DMV to the Court of Common Pleas is limited to correcting errors of law and determining whether substantial evidence exists to support the hearing officer's findings of fact and conclusions of law.³ If substantial evidence exists in the record below, this Court "may not re-weigh and substitute its own judgment" for that of the agency.⁴ Substantial evidence requires such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁵

³ *Shahan v. Landing*, 632 A.2d 1357 (Del. 1994); *Howard v. Voshell*, 621 A.2d 804 (Del. 1992); *see also Cesar v. Delaware Dep't of Transp. Div. of Motor Vehicles*, CPU4-10-004958 (Del. Com. Pl. Mar. 28, 2011) (citing *Lundin v. Cohan*, 2009 WL 188001, at *2 (Del. Com. Pl.))(ORDER);

⁴ *Wayne v. Division of Motor Vehicles*, 2004 WL 326926 at *1 (Del. Com. Pl.) (citing *Bartnett v. Division of Motor Vehicles*, 514 A.2d 1145 (Del. Super. Ct 1986)); *Janaman v. New Castle County Board of Adjustment*, 364 A.2d 1241, 1242 (Del. Super. Ct. 1976).

⁵ *Howard*, 621 A.2d at 806 (citing *Quaker Hill Place v. State Human Relations*, 498 A.2d 175 (Del. Super. Ct. 1985)); 21 *Del. C.* § 2742(c).

Findings of fact will not be overturned on appeal as long as they are sufficiently supported by the record and are the product of an orderly and logical deductive process.⁶ Case law also provides that "when the facts have been established, the hearing officer's evaluation of their legal significance may be scrutinized upon appeal."⁷ The DMV's "understanding of what transpired is entitled to deference, since the hearing officer is in the best position to evaluate the credibility of witnesses and the probative value of real evidence."⁸

DISCUSSION

The only issue raised on appeal is whether the DMV hearing officer erred as a matter of law in ruling that the Trooper had probable cause to believe that Oscar was operating a motor vehicle under the influence of alcohol.⁹ Oscar contends that the record reflects an accident, strong odor of alcohol, and bloodshot, glassy eyes, but that those factors alone are insufficient to constitute probable cause to arrest Oscar for driving under the influence in violation of 21 Del. C. § 4177(a). This Court disagrees.

Under Delaware law, probable cause is determined by the "totality of the circumstances, as viewed by a reasonable police officer in the light of his or her training and experience."¹⁰ To establish probable cause, the police are only required to present facts which suggest, when those facts are viewed under the totality of the circumstances,

⁶ *Eskridge v. Voshell*, 593 A.2d 580 (Del. 1991)(Table), 1991 WL 78471, at *2 (Del.)(citing *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972)); *Quaker Hill Place v. State Human Relations*, 498 A.2d 175 (Del. Super. Ct. 1985)).

⁷ *Voshel v. Attix*, 574 A.2d 264 (Table), 1990 WL 40028, at *2 (Del.).

⁸ *Id.* at *2.

⁹ Oscar does not dispute that she refused to take any tests after being informed of the implied consent statute.

¹⁰ *Miller v. State*, 4 A.3d 371, 373-74 (Del. 2010) (citing *State v. Maxwell*, 624 A.2d 926, 929-30 (Del. 1993)); *see also Lefebvre v. State*, 19 A.3d 287, 29-93 (Del. 2011) (citing *Clendaniel v. Voshell*, 562 A.2d 1167, 1170 (Del. 1989)).

that there is a fair probability that the defendant has committed a crime."¹¹ The police do not need to prove guilt beyond a reasonable doubt, nor even prove guilt is more likely than not."¹² Moreover, the possibility there may be hypothetically innocent explanations for facts revealed during a police investigation does not preclude a determination that probable cause exists for an arrest.¹³ It is "required," however, that "the arresting police officer possess 'a quantum of trustworthy factual information' sufficient to warrant a man of reasonable caution in believing a DUI offense has been committed."¹⁴ Probable cause may be "established by the officer's own observation or from hearsay."¹⁵

In the present case, based upon the totality of circumstances, Corporal Boswick had probable cause to conclude that Oscar had operated a vehicle under the influence of alcohol in violation of 21 Del. C. 4177(a). Given the lesser evidentiary standard needed for a probable cause finding, the Trooper's testimony as to her observations is more than sufficient foundational evidence.¹⁶

The substantial evidence which supports the finding of probable cause is as follows:

¹¹ *Miller*, 4 A.3d at 373 (citing *Jarvis v. State*, 600 A.2d 38, 42-43 (Del. 1991)(citations omitted)); *Lefebvre*, 19 A.3d at 292-93 (citing *Maxwell*, 624 A.2d at 930)).

¹² *Miller*, 4 A.3d at 373-74 (citing *Maxwell*, 624 A.2d at 930)(citations omitted)).

¹³ *Lefebvre*, 19 A.3d at 293.

¹⁴ *Id.*

¹⁵ *Malone v. Voshell*, 1993 WL 489452, *2 (Del. Super. Ct.); see *Lefebvre*, 19 A.3d at 293 ("whether probable cause exists to arrest a driver for a DUI offense is generally decided by the arresting officer's observations, which frequently include the quality of the driver's performance on field sobriety tests. Although no precise formula exists, the boundaries of what constitutes probable cause for a DUI have been defined and refined in a variety of factual contexts.").

¹⁶ *Cantrell v. Division of Motor Vehicles*, 1996 WL 453425 (Del. Super. Ct.), *aff'd* 1997 WL 70816 (Del.).

- The vehicle had been left by Oscar with the engine running in a ditch with heavy front end damage, air bags deployed, in parked gear, and the driver's door was left open;
- Oscar admitted driving and admitted drinking. She admitted to being in the accident. She could not state why the accident took place but claimed she may have been texting;
- When the trooper made contact with Oscar, the trooper observed a strong odor of alcohol on Oscar's breath and Oscar had bloodshot, glassy eyes;
- Oscar stated that, at her friends' home after the accident, she drank an unknown quantity of an unknown wine from an unknown container, but could not produce the container from which she drank the wine;
- Oscar's claim that she drank wine at her friends' house was directly contradicted by the friends who stated they had no alcohol in the house and had only given Oscar a bottle of iced tea to drink, which the Trooper personally observed upon first contact with Oscar;
- The trooper accepted as credible the friends' statement that Oscar had not consumed alcohol in their home; and
- In explaining to the trooper why she would not submit to a test, Oscar stated, "I don't want to have a second D.U.I."

CONCLUSION

This Court is required to review the administrative decision of the DMV to correct errors of law; and to determine whether substantial evidence of record exists to support the findings of fact and conclusions of law. Considering the totality of the circumstances, this Court concludes that there was sufficient evidence in the record to support the hearing examiner's finding of probable cause that Oscar had violated 21 Del. C. § 4177. **Therefore, the conclusion of the hearing officer is hereby AFFIRMED.**

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli